SUPREME COURT OF THE UNITED STATES.

No. ~~116~~ 28.

CHESAPEAKE AND OHIO CANAL COMPANY, PLAINTIFF IN ERROR,

VERSUS

JOHN MASON.

IN ERROR TO THE CIRCUIT COURT OF THE U. S. FOR THE COUNTY OF WASHINGTON, D. C.

INDEX.

	Original.	Print.
Writ of error	1a	1
Parties	1	2
Warrant of inquisition	1	2
Inquisition	3	4
Motion to affirm inquisition	6	5
Appearance of Jno. Mason	6	5
Defendant's objections to affirming inquisition	7	5
Defendant's description of the property	8	6
Agreement of counsel	9	6
Judgment	11	7
Clerk's certificate	11	7

Writ of error.

UNITED STATES OF AMERICA, ss.—*The President of the United States, to the Judges of the circuit court of the United States for the District of Columbia, sitting for the county of Washington, greeting.*

Because in the record and proceedings, as also in the rendition of the judgment on a certain inquisition which is in the said circuit court, before you or some of you, which inquisition was had by a certain Chesapeake and Ohio Canal Company on the land of John Mason, a manifest error hath happened, to the great damage of the said Chesapeake and Ohio Canal Company, as by its complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings

aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with writ, so that you have the same at Washington, on the next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the laws and the custom of the United States, should be done.

Witness the honorable John Marshall, Chief Justice of the said Supreme Court.

Issued this 20th day of January, 1832.

WM. BRENT,
Clk. of Ct. Ct. of D. Ca. for co'ty of Wash'n.

Service of citation acknowledged.

F. S. KEY,
Att'y for def't in error.

Test: W. BRENT, *Clk.*

DISTRICT OF COLUMBIA, sct.

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the first Monday of May, being the second day of the same month, in the year of our Lord one thousand eight hundred and thirty-one, and of the independence of the United States of America the 55th:

Present:

The Hon'ble { WILLIAM CRANCH, *Chief Judge.* / BUCKNER THRUSTON, & / JAMES S. MORSELL, } *Assistant Judges.*
HENRY ASHTON, Esquire, *Marshal.*
WILLIAM BRENT, *Clerk.*

In the record of proceedings of the same court, among others, are the following, to wit.

Parties.

John Mason's inquisition.

Be it remembered, that heretofore, to wit, on the 24th day of July, in the year of our Lord 1830, the Chesapeake and Ohio Canal Company, by Clement Cox, Esquire, their attorney, filed in court here the following warrant and inquisition, to wit.

Warrant of inquisition.

DISTRICT OF COLUMBIA, *Washington county, to wit.—John Cox, a justice of the peace in and for Washington county aforesaid, to the Marshal of the District of Columbia, greeting.*

Whereas it has this day been made to appear to me that the Chesapeake and Ohio canal is intended to pass through the

three pieces of land lying in Georgetown, in the county aforesaid, and respectively bounded as follows, to wit: for the boundary of one piece thereof, beginning at the end of one hundred and thirty-four feet measured south on the east boundary line of Fayette street from the southeast corner of Bridge and Fayette streets of said Georgetown, and running thence with said line of Fayette street, south, sixteen feet; thence east, and parallel with Bridge street, sixty-six feet, to the southwest corner of a brick stable and carriage house; and thence, in a straight line, to the beginning. And for the boundary of another piece of said land, beginning at the south end of the west boundary line of Warren street, and running thence with said line of Warren street, north, to the south line of Bridge street aforesaid; thence, with said line of Bridge street, west, one hundred feet; thence south, and parallel with the first line, to the channel of the river Potomac; and thence, in a straight line, to the place of beginning. And for the boundary of the third piece of said land, beginning at the end of fourteen feet measured north on the west boundary line of Warren street from the northwest corner of Bridge and Warren streets, and running thence on said line of Warren street, south, fourteen feet, to said northwest corner; thence with the northern line of Bridge street, west, ninety-four feet, to a piece of land held and occupied by Enoch King; thence north, and parallel with the first line, forty-five feet; and thence, in a straight line, to the beginning: which bounded pieces of land are the property of John Mason. And that all the said bounded pieces of land are needed and required, as of an absolute estate in perpetuity, by the Chesapeake and Ohio Canal Company for its use: and that the owner of said land disagrees with the President and Directors of said company for the sale of said land. And application has thereupon this same day been made to me by the said President and Directors, acting in behalf of said company, for this warrant, pursuant to the provisions of the charter of said company: therefore, you are hereby commanded, that, all delays and excuses apart, you do summon a jury of eighteen good and lawful men, inhabitants of your county, not related to the parties, nor in any manner interested, to meet on the said pieces of land hereinbefore bounded and described, on the eighth day of July next, for the purpose of valuing said pieces of land as of an absolute estate in perpetuity, and all damages the owner thereof shall sustain by cutting the Chesapeake and Ohio canal through the said pieces of land. And the inquisition thereupon to be taken, you do sign, and cause to be signed by some twelve or more of the said jury, and do thereupon return, together with this warrant, to the clerk of the county aforesaid. Hereof, fail not.

Given under my hand, at Washington county aforesaid, this twenty-sixth day of June, in the year of our Lord one thousand eight hundred and thirty.

JOHN COX. [SEAL.]

Inquisition. DISTRICT OF COLUMBIA, *Washington county, to wit.*

Inquisition indented and taken this eighth day of July, in the year of our Lord eighteen hundred and thirty, before me, Tench Ringgold, Marshal of the District of Columbia, by virtue of a warrant, for that purpose, from John Cox, a justice of the peace in and for said county, to me directed and returned, annexed hereto, and made part of this inquisition, on the several pieces of land described in said warrant, and, after notice of said warrant, and of the time and place of taking this inquisition, by me duly given to John Mason, named in said warrant, and by the oaths of Joel Brown, Frederick W. Huber, Thomas J. Marshal, William Collins, Edward Fenwick, Albert C. Hicks, Richard Harrison, William Wheatley, James Glenn, Peter Burkhart, Daniel Cover, Iver Campbell, Alexander Shepherd, and John P. Latruite, being those jurors who have appeared of eighteen good and lawful men, inhabitants of said county, not related to the parties, nor in any manner interested, duly summoned by me, pursuant to the mandate of said warrant, to meet on said pieces of land, this day, for the purposes mentioned in said warrant, every one of which jurors, who have appeared as aforesaid, being, when met by me, duly sworn and affirmed according to law, on the said land, that he will faithfully, justly, and impartially value said pieces of land as of an absolute estate in perpetuity, and all damages the owner of said pieces of land shall sustain by cutting the Chesapeake and Ohio canal through the same, according to the best of his skill and judgment; and that in such valuation he will not spare any person for favor or affection, nor any person grieve for malice, hatred, or ill will. They, the said jurors, who have appeared as aforesaid, do thereupon, upon their oaths, as aforesaid, say, that the said first piece of land described in said warrant as of an absolute estate in perpetuity, and all damages the owner thereof shall sustain by cutting the said canal through the same, are of the value of one dollar; and say, that the said second piece of land described in said warrant as of an absolute estate in perpetuity, and all damages the owner thereof shall sustain by cutting the said canal through the said pieces of land, are of the value of twenty-five dollars; and say, that the said third piece of land described in said warrant as of an absolute estate in perpetuity, and all damages the owner thereof shall sustain by cutting the said canal through the said piece of land, are of the value of twenty-five dollars.

And the said jury say, that said valuations and assessments of damages are made by them, after view and survey of the said several pieces of land; that the said several pieces af land are required as of an absolute estate in perpetuity by the Chesapeake and Ohio Canal Company for its use; and to describe and ascertain the bounds of the said pieces of land, the said jury adopt the descriptions and bounds thereof respectively contained in said warrant, and make the same part of this inquisition.

333.

In testimony whereof, as well I, the said marshal, as the jurors aforesaid, have hereunto set our respective hands and seals, this same day.

TENCH RINGGOLD, *Marshal.* [SEAL.]

Joel Brown.	[SEAL.]	W. Wheatly.	[SEAL.]
F. W. Huber.	[SEAL.]	James Glenn.	[SEAL.]
Tho. Marshall.	[SEAL.]	Peter Burkneart.	[SEAL.]
Wm. Collins.	[SEAL.]	Daniel Cover.	[SEAL.]
Edward Fenwick.	[SEAL.]	Iver Campbell.	[SEAL.]
A. C. Hicks.	[SEAL.]	Alex'er Shepherd.	[SEAL.]
Rd. Harrison.	[SEAL.]	John P. Latruite.	[SEAL.]

Motion to affirm inquisition.

Appearance of Jno. Mason.

And the said Chesapeake and Ohio Canal Company, at the time of filing the said warrant and inquisition, by their attorney aforesaid, moved the court for an order to have the same affirmed and recorded, unless good cause be shown to the contrary. And the said John Mason, being called, appears in court here by F. S. Key, Esq., his attorney; and the said John Mason, by his attorney aforesaid, prays leave of the court here for time to show cause why the said warrant and inquisition should not be affirmed; and the first Monday of December next is given him; and the same day is given to the said Canal Company also.

At which said first Monday of December, to wit, in the year 1830, came again into court here the parties aforesaid, by their attorneys aforesaid; and thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties, by their attorneys aforesaid, and by order of the court here thereon, is continued until the first Monday of May next.

And now, at this day, to wit, the said first Monday of May, in the year of our Lord 1831, came again into court here the parties aforesaid, by their attorneys aforesaid; and the said John Mason, by his attorney aforesaid, files in court here the following objections to the affirming of the aforesaid warrant and inquisition.

Defendant's objections to affirming inquisition.

1st. That it was made without notice.

2d. That it is made for land not taken for the canal or any of its works, nor necessary therefor.

3d. That the jury did not describe and ascertain the bounds of the land mentioned in the inquisition.

4th. That the land was not surveyed in the presence of the jury, nor by any authority from them; nor was the beginning, nor any of the other points mentioned in the inquisition, ascertained by the jury to be as described therein.

5th. That the points and lines were shown, and the statements describing them made by the company's own officers, who had previously made the survey under the orders and directions of the company, and not under oath.

6th. That the stones mentioned in the inquisition as bounding the lands attempted to be condemned, were not set up at the time of the taking the inquisition, and have not even yet been set up.

7th. That the inquisition was directed to be taken by a justice of the peace, and not by the court, there having been a former one quashed.

9th. That the 18 jurors are not named, so as to enable us to see if there were 18 good and lawful men, inhabitants, &c. &c., summoned as required.

10th. Because some of the 18 who had been summoned, were excused.

11th. Because of the gross inadequacy of the damages.

12th. The quantity of land not designated.

13th. That the description of the land sought to be condemned in the inquisition is insufficient and inaccurate, and does not define the land sought to be condemned.

14th. That the land was not subject to condemnation under the charter. (For additional objections, see page 10.)

It is agreed that the basin and mole of the canal are probably three miles below the head of tide water of the Potomac.

Defendant's description of the property condemned.

The defendant proved that the lot in question, described in the inquisition, is a water lot, running out to the channel of the river; and proved that the company's work of canal and towpath takes a small part of the upper part of the lot, and that the bank of the towpath is distant about 40 feet from the river at this time; and then proved, by the engineer of the company, that a bridge was to be made across the canal above the lot in question, and that, from that bridge, a road was to be made through the lot in question, and extending a small distance into the river beyond high water mark, and leaving south of said road, and between said road and the channel of the river, a space of near 100 yards, of which space no part beyond the south side of said road would be wanted for the canal or any of its works; that if said bridge and road were not made, then it would not be necessary to take, for the canal and towpath, nor for the slope of the towpath, all the fast land of the said water lot, but there would be then a space between the bank and slope supporting the towpath and the water's edge.

Agreement of counsel.

CHESAPEAKE & OHIO CANAL COMPANY *vs.* JOHN MASON. } (Agreement filed in three cases.)

In these cases it is agreed that the plats used by the parties in the circuit court, and all deeds and documents respecting the titles of defendants, or copies of them, shall be used on these appeals, without being copied or referred to in the record; also, that all the printed documents, reports, and proceedings of the board and of the company, and the memorials presented to the Congress of the United States and the Legislatures of Maryland and Virginia, and the documents accompanying them, shall be also used as if contained in the record.

That the causes shall be heard together, and as if cross appeals had been made in each case by the defendants, so as to get a de-

cision on the points decided by the circuit court, both for and against the defendants. A release, executed by the company in favor of John Mason, is also to be used as if in the record; also, a deed from Taney to Mason and Stoddart.

The objection of want of notice in the case against John Mason, is also to be considered by the Supreme Court; and depositions may be taken, on one day's notice, before a justice of the peace, to support the objection, which are to be considered as if in the record. It is also agreed, in the case against John Mason, that the plat made out in that case by Carberry and Purcell, or Bussard and Rodier, or, if that is lost, any other that they may make, showing the lot, the canal, and bank and road, or street and bridge, and the land condemned, and the channel opposite to the lot, may be used as if in the record.

THO. SWANN,
the Canal Comp'y.
F. S. KEY,
for def'ts.

Objections omitted in page 8.

15th. Because the jury set off against the damages the benefits that might arise to the owner by the making of the canal.

16th. Because the owner is not named in the inquisition, and the warrant not annexed to the inquisition.

Whereupon all and singular the premises being by the court here seen, heard, and fully understood, and mature deliberation being thereupon had, for that it appears to the court that the said inquisition be quashed, with costs. Judgment.

Test: WILLIAM BRENT, *Clerk.*

And whereas, afterwards, to wit, on the 18th day of January, 1832, the said Chesapeake and Ohio Canal Company, by their attorney aforesaid, produced and filed in court here the United States' writ for the correction of errors of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereto relating, with the writ of error aforesaid, hereto annexed, is hereby transmitted to the said Supreme Court accordingly. (Appeal bond dispensed with by consent.) Clerk's certificate.

In testimony whereof, I have hereto subscribed my name, and affixed the public seal of the said circuit court for the county aforesaid, this twentieth day of January, 1832.

WILLIAM BRENT, *Clerk.* [L. S.]

337

SUPREME COURT OF THE UNITED STATES.

No. ~~117~~

CHESAPEAKE AND OHIO CANAL COMPANY, PLAINTIFF IN ERROR,

VERSUS

HOWES GOLDSBOROUGH.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE COUNTY OF WASHINGTON, D. C.

INDEX.

	Original.	Print.
Writ of error	1a	1
Parties—warrant of inquisition	1	2
Inquisition	2	3
Motion to affirm inquisition	4	4
Appearance of Howes Goldsborough	4	5
Defendant's objections to affirming inquisition	5	4
T. F. Purcell's deposition	5	5
Wm. Bussard's do	9	7
Robert Mills's do	10	8
T. F. Purcell's do	15	10
Agreement of counsel	15	10
Memorial of the mayor of Washington to the President of the United States, for a grant of a portion of the President's square	17	11
Grant of the President of the United States	17	12
Resolution requesting the mayor to ask for a portion of the President's square for a basin	18	12
Report of engineers to the joint committee of city council	19	12
Proceeding of the Chesapeake and Ohio Canal Company	20	13
Judgment of circuit court	22	14
Clerk's certificate	23	14

UNITED STATES OF AMERICA, ss.—*The President of the United States, to the Judges of the Circuit Court of the United States for the District of Columbia, sitting for the county of Washington, greeting.*

Because in the record and proceedings, as also in the rendition of the judgment on a certain inquisition, which is in the said circuit court, before you or some of you, which inquisition was had by a certain Chesapeake and Ohio Canal Company on the land of Howes Goldsborough, a manifest error hath hap-

pened to the great damage of the said Chesapeake and Ohio Canal Company, as by their complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the laws and the custom of the United States, should be done.

Witness the honorable John Marshall, chief justice of the said Supreme Court.

Issued this 24th day of January, 1832.

WM. BRENT, *Clk.* [L. S.]

Service of citation acknowledged by F. S. Key, Esquire, att'y for Howes Goldsborough.

Test: WM. BRENT, *Clk.*

DISTRICT OF COLUMBIA, sct.

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the first Monday of December, being the fifth day of the same month, in the year of our Lord one thousand eight hundred and thirty-one, and of the independence of the United States of America the fifty-sixth:

Were present:

The Hon. WILLIAM CRANCH, Chief Judge.
BUCKNER THRUSTON, & JAMES S. MORSELL, Assistant Judges.
HENRY ASHTON, Esquire, Marshal.
WILLIAM BRENT, Clerk.

In the record of proceedings of the same court, among others, are the following, to wit.

Howes Goldsborough's inquisition.

Parties. Be it remembered, that heretofore, to wit, on the sixteenth day of March, in the year eighteen hundred and thirty, the Chesapeake and Ohio Canal Company, by Clement Cox, Esquire, their attorney, filed in court here the following warrant and inquisition, to wit.

Warrant for inquisition.

DISTRICT OF COLUMBIA, *Washington county, to wit.—John Cox, a justice of the peace in and for Washington county aforesaid, to Tench Ringgold, Marshal of the District of Columbia, greeting.*

Whereas it has this day been made to appear to me, that the Chesapeake and Ohio canal is intended to pass through all that piece of land lying in the said county, being part of square "three," (3,) of the city of Washington, included in the following boundary lines, to wit: beginning at the centre of the east boundary line of said square, and running thence on said line, south, one hundred and twenty-feet; thence west, and at right angles with the first line, to the western line of said square, and to the channel of the river Potomac; thence with said channel, northwardly, to a point due west of the point of beginning; and thence, in a straight line, to the beginning; the property of Howes Goldsborough; and that all the said described land is needed, as of an absolute estate in perpetuity, for the making of the said canal and its appurtenant works; and that the owner of the said land is out of the county aforesaid: and application has thereupon this same day been made to me, in behalf of the Chesapeake and Ohio Canal Company, by the President and Directors thereof, for a warrant to value the said land for the estate and interest therein aforesaid, and all damages the owner of the said land shall sustain by cutting the said canal through the said land, pursuant to the provisions of the charter of the said company:

You are, therefore, hereby commanded, that, all delays and excuses apart, you do summon a jury of eighteen good and lawful men, inhabitants of the county aforesaid, not related to the parties, nor in any manner interested, to meet on the said land on the sixteenth day of this present month, for the purpose of making the said valuation and assessment of damages. And the inquisition thereupon to be taken, you do sign, and cause to be signed by some twelve or more of the said jury, and do thereupon return to the clerk of the county aforesaid. Hereof, fail not.

Given under my hand, at the county aforesaid, this third day of December, in the year of our Lord one thousand eight hundred and twenty-nine.

JOHN COX.

DISTRICT OF COLUMBIA, *Washington county, to wit.*

Inquisition.

Inquisition indented and taken this sixteenth day of December, in the year of our Lord one thousand eight hundred and twenty-nine, before me, Tench Ringgold, Marshal of the District of Columbia, by virtue of a warrant for that purpose from John Cox, a justice of the peace in and for Washington county aforesaid, to me directed, and herewith returned, on the land mentioned and described in said warrant, by the oaths of Joel Brown, William Hebb, Frederick W. Huber, Henry Pyfer, Edward Fenwick, Thomas Metcalf, John G. Wilson, Daniel

Swett, Franklin J. Didier, Lewis W. Glenn, William Coolidge, junior, William H. Campbell, Albert C. Hicks, and the affirmation of Robinson Stabler, a Quaker, who holds it unlawful to take an oath on any occasion, being those jurors that appear of eighteen good and lawful men, inhabitants of the county aforesaid, not related to the parties, nor in any manner interested, duly summoned by me pursuant to the mandate of said warrant; every one of which jurors, who have appeared as aforesaid, being by me duly sworn on the land aforesaid, and affirmed according to law as aforesaid, that he would faithfully, justly, and impartially value the said land, and all damages the owners thereof shall sustain by cutting the Chesapeake and Ohio canal through the said land, according to the best of his skill and judgment; and that, in such valuation, he will not spare any person for favor or affection, nor any person grieve for malice, hatred, or ill will: they do thereupon, upon their oaths and affirmations, as aforesaid, say that the said land, described in said warrant as of an absolute estate in perpetuity, and all damages that the owners thereof shall sustain by cutting the said canal through the said piece of land, are of the value of two hundred and fifty dollars.

In testimony whereof, as well I, the said marshal, as the said jurors, hereunto set our hands and seals, on the day and year first mentioned in this inquisition.

TENCH RINGGOLD, *Marshal.* [seal.]

Joel Brown.	[seal.]	Daniel Swett.	[seal.]
Will. Hebb.	[seal.]	F. J. Didier.	[seal.]
F. W. Huber.	[seal.]	Lewis W. Glenn.	[seal.]
Henry Pyfer.	[seal.]	Wm. Coolidge, jr.	[seal.]
Edward Fenwick.	[seal.]	Wm. H. Campbell.	[seal.]
Thomas Metcalfe.	[seal.]	Albert C. Hicks.	[seal.]
John G. Wilson.	[seal.]	Robinson Stabler.	[seal.]

Motion to affirm inquisition.

And the said Chesapeake and Ohio Canal Company, at the time of filing said warrant and inquisition, by their attorney aforesaid, moved the court for an order to have the same affirmed and recorded, unless good cause be shown to the contrary.

Appearance of H. Goldsborough.

And the said Howes Goldsborough, being called, appears in court here, by Francis S. Key, Esquire, his attorney; and the said Howes Goldsborough, by his said attorney aforesaid, prays leave of the court here, for time to show cause why said proceedings should not be affirmed; and the first Monday of May next is given him; and the same day is given the Chesapeake and Ohio Canal Company also.

At which said first Monday of May, in the year of our Lord one thousand eight hundred and thirty, come into court here as well the Chesapeake and Ohio Canal Company, by their attorney aforesaid, the said Howes Goldsborough, by his attorney aforesaid. Thereupon, further proceedings of and upon the premises aforesaid is continued until the first Monday of December next.

At which said first Monday of December, in the year of our Lord one thousand eight hundred and thirty, come again into

court here as well the said Chesapeake and Ohio Canal Company, as the said Howes Goldsborough, by their attorneys aforesaid. Thereupon, further process of and upon the premises aforesaid is continued until the first Monday of May next.

At which said first Monday of May, in the year of our Lord one thousand eight hundred and thirty-one, come again into court here as well the said Chesapeake and Ohio Canal Company, as the said Howes Goldsborough, by their atttorneys aforesaid. Thereupon, further process of and upon the premises aforesaid is continued until the first Monday of December next.

At which said first Monday of December, in the year of our Lord one thousand eight hundred and thirty-one, come again into court here as well the said Chesapeake and Ohio Canal Company, as the said Howes Goldsborough, by their attorneys aforesaid; and the said Howes Goldsborough, by his attorney aforesaid, files in court here the following objections to the affirming of the said inquisition, to wit.

1st. That it was made without notice.

2d. That the jury did not describe and ascertain the bounds of the land mentioned in the inquisition.

Defendant's objections to affirming inquisition.

3d. That the inquisition was directed to be taken by a justice of the peace, and not by the court, there having been a former inquisition quashed.

4th. That the 18 jurors are not named, so as to enable us to see if they were 18 good and lawful men, inhabitants, &c. &c. summoned as required.

5th. Because some of the 18 who had been summoned, were excused.

6th. Because of the gross inadequacy of the damages, the jury having set off against the owner the benefits of the canal.

7th. The quantity of land not designated.

8th. That the description of the land sought to be condemned in the inquisition is insufficient and inaccurate, and does not define the land sought to be condemned.

9th. That the land was not subject to condemnation under the charter.

10th. Because the owner is not named in the inquisition, and the warrant not annexed to the inquisition.

In the trial of this case, the defendant, in support of his objection to the extent of the condemnation made by the company, produced as a witness Thomas F. Purcell, an engineer in the employment of the company in constructing the basin and mole at the mouth of Rock creek, who stated that the general width of the mole, as now constructed, is 160 feet, but at the def'ts property the greatest width is about 100 feet, the least width at 80 feet; that it was at first intended to be 80 feet, and was enlarged (as he believes) on account of the facility with which earth was obtained to fill it; that the entire length of the mole is 1,050 feet, including 60 feet at the foot of Washington street, of which 850 feet can be used as a landing way, the remainder being occupied by the waste weir; that is his

T. F. Purcell's deposition.

opinion that 4,050 or 60 feet would be a sufficient width to secure the water in the basin, and the works behind it; and that if it was costly to get earth, and he had been required to make a mole of sufficient strength, and of the narrowest base consistent with security, he thought he could make it of the width of 35 feet, but it would be in a stronger manner, and at a proportionally greater cost than the present. That this mole has been entirely formed, except the masonry, of earth obtained in cutting the canal through the town, of which there was a great abundance which could not well be otherwise disposed of: that the average depth from the surface of the mole to its base is 20 feet; and that, if not confined with walls, the earth would spread out on each side of the surface eighteen inches for every foot of depth, so that to give a surface of 100 feet the base must be 160 feet in width. And in case the walls and outward protection of the mole should give way, the mole would probably assume the same form and proportion between surface and base: the mole has been constructed with reference to the channel, and so as to be parallel with it, for the double purpose of permitting shipping to lie alongside of it, to offer the most favorable exposure for resisting the ice freshets in the river. At the river front of the mole, a large quantity of rubble stone has been thrown in, (and they lie at their natural slope,) to strengthen the work: by this means, at low water, from the surface water mark to the top of the rubble stone, is a general depth of 7 feet, which, in one or two places, as a part of the property included in this inquisition, is reduced to 5 feet, and from the surface water mark to the base of the stone is from 15 to 18 feet; and vessels can lie along the mole with keels of the last mentioned draught: at the property in question, this is probably reduced to 12 or 15 feet. This witness attended the jury at the period of viewing the land, preparatory to condemnation, under oath, as a witness, pointed out the land, as he had formerly, in the absence of the jury, surveyed it for the company, showing the land boundaries, but not the corners in the water. (The basin and mole, and the land condemned, are probably three miles below the head of tide water of the Potomac.)

Thos. F. Purcell's answers to pl'ffs examination.

That any canal, not provided with a basin and pier or levee to discharge the produce, will labor under a great disadvantage: every canal that is now planned has a basin and landing place provided. At Richmond there is a basin, and landing place at the lower end of basin. At New Orleans there is a levee along the whole extent of the town. At the terminus of the New York canal there is a basin of considerable extent, and a mole or levee 80 feet wide, frequently so crowded with goods as to create a considerable inconvenience to the trade. The memorial of the Liverpool and Manchester *and* Railway subscribers complain of the old quay and the Duke of Bridgewater's canal, because of the want of wharf and warehouse room.

If the trade which comes down the Ches. and Ohio ever realize the expectation and calculations of its friends and projectors, the mole will be found too contracted.

The mole should be under the control of the company, because individuals, by intervening an obstruction between the basin and the vessels in the river, may impede the trade, or exact such excessive wharf rates as to change the course of trade.

The company sh'd not sell the mole for warehouses without some limitation to the wharf duty to be demanded, nor sh'd they sell the whole mole under any circumstances, because there may be carriers who do not choose to warehouse their produce, but want to transfer it immediately into the sea vessels.

If the produce brought down the canal, when landed from the boats, is removed without delay to the ships or warehouses, a mole of less dimensions, say of 40, 50, or 60 feet, would be sufficient. To pay an interest on the expenditure and the repairs of the canal, about 600 tons per day must be brought into the basin, for 250 days in the year; and during the brisk seasons of trade, produce will accumulate on the mole to a much greater extent.

The mole at Albany is believed to be between 2 and 3,000 feet long, and 80 feet wide.

Piers or levees are designed to receive the produce which is bound down the canal, and, when planned, have generally, in time, been found to be too contracted; active seasons of trade frequently occur, when there is such a glut of produce as to render all reasonable provision inadequate to the pressure of trade; coal, lumber, lime, and other imperishable articles will be brought to market, and kept for seasons of demand.

Does not think the mole at Rock creek disproportioned to the extent of the canal.

Mole at New Orleans from 50 to 70 feet wide; and at Richmond from 30 to 100 feet wide.

Canal of Ches. and Ohio 60 feet wide at top water line, and 6 feet deep; that of New York 40 feet wide at surface, and 4 feet deep; at Richmond it is small.

Answers of Wm. Bussard to the questions propounded by F. S. Key, Esq. W. Bussard's deposition.

The adjacent grounds, being private property, lying around the basin at Rock creek, and bordering thereon, present very great facilities for the erection of warehouses, and the reception of goods and produce from the basin.

There are many good warehouses and wharves already built in that part of Georgetown not far from the basin, and some few in Washington city. Nearly the whole shore of the basin, on each side of the creek, is adapted to the erection of warehouses, except some points which present too abrupt a rise in the ground. As to the amount of produce which will proba-

bly be discharged at this basin, the witness cannot say: he has not seen any of the basins which have been constructed at the termination of the great canals of this country.

Have you examined the property of the defendant condemned by the company? What do you believe would be the value of it if he can retain it?

Answer. I cannot assign the exact value of said property; but, as a minimum, it would certainly be worth considerably more than one thousand dollars.

To what amount do you consider the defendant's property injured by the condemnation, and the works of the c. company on his land?

Answer. More than one thousand dollars.

State your reasons for your answers to the two last questions.

The reason of my belief on this subject is, that the quantity of property taken by the canal company from Mr. Goldsborough, is, in my opinion, worth more than $1,000, and his loss I estimate as the measure of his damage.

R. Mills's deposition.

Answers of Robert Mills to interrogatories by Goldsborough.

Question 1. "What is the greatest width of base necessary to secure said canal and works?"

(N. B. The canal runs alongside of the river, (Potomac,) which deepens, as it recedes from the shore, about 10 feet to the 100; the bottom is miry; the water is to be kept in the canal 3 feet above the level of high tide; the outside of the embankment must be secured by a stone wall, at all events, to guard against the ice in the river.)

Answer 1. To give a definite answer to this question, other circumstances than those above noted, of a local nature, would have to be considered, such as the relative position of the wall of enclosure of canal with the shoot or current of the floods of the river, so as to judge of what the maximum force would be, of the *ice* brought down by the floods, striking against the wall.

Under common circumstances, however, and with a due reference to the importance of the work in question to be protected from the floods of the river, I should judge it most prudent to provide a base for the outer works of the canal at least 30 wide, measuring from the inner line of the berm of canal to the outside of wall.

Question 2d. What is the narrowest base that would be sufficient in the above case?

Answer 2. I should not, under the circumstances in which this wall and works are placed, recommend a narrower base than that mentioned above, though, where a few feet was important to save, 25 feet base would suffice. There are some peculiar locations of canals which would justify the reduction of base even under 25 feet; but a different mode of constructing it than is usually adopted would have to be pursued, involving greater expense; but our canal does not come under this character.

Question 3d. What space should be necessarily left open along the margin of the basin or mole, for the landing of cargoes from boats, and removing the same by carts, wagons, &c.?

Answer 3. The space necessary to be left open along the margin of the basin of a canal, for commercial purposes, must or ought to be regulated by the nature of the trade to be carried on upon it. In the case of the canal in question, which is destined for a large trade, and this in articles of great bulk principally, I should judge that 100 feet ought to be left open for the reception of these articles, and to provide for the free ingress and egress of the wagons, persons, and carriages of every description. If this width is not necessary on both sides of the basin, it is more requisite on that side which is next to the shipping, where the double operation of landing articles from the boats on the canal, and re-shipping the same on board of sea vessels, takes place. And where there are no turn-out streets, as on the city side of the basin, a freer way ought to be provided for the passage of vehicles of all kinds, as well as passengers, &c.

ROB'T MILLS,
Engineer & Architect.

CITY OF WASHINGTON, *Oct. 22d*, 1831.

Sworn to in open court 7th Nov. 1831.

WM. BRENT, *Clk.*

Question 4. From an inspection of the basin, as now made, at the mouth of Rock creek, and as the same is laid down on the map, where does the basin terminate, and the canal commence, at the eastern extremity towards the city of Washington?

Answer 4. It is evident, from an inspection of the map, that what is termed *Rock creek basin*, terminates at the *point* formed by the intersection of the line ranging with the N. E. side of the bridge across the waste weir, and the line constituting the east boundary of the eastern end of the mole.

As I understand that the canal proposed to connect Rock creek basin with that of the Tiber, or Washington, is to be 40 feet wide, and the eastern end of the first named basin is contracted to this width of 40 feet, I infer that this section of the work is intended to constitute canal, not basin.

For the purposes of commerce, I presume that a width of landing on each side of the canal, not less than 40 feet, is contemplated.

Cross-examined.

Referring to the map marked and the plan, form, and limits of the basin and mole, as there laid down, do you not find sufficient motive for reducing the width of that part of the basin which you infer constitutes canal, in the advantage of thereby giving additional width to the mole? and do you not discover a sufficient motive for extending the basin beyond the limit assigned by you as its termination, over the part called canal, in the manner in which it has been extended, in the advantage of the additional front thereby given to the mole, &c., for receiving produce from the boats, &c., without there being an ulterior design of carrying a canal to the Tiber?

Answer 5. Putting the canal to Washington out of the question, the whole extent of the present water line at Rock creek must be considered as constituting *basin*, and therefore demanding a correspondent breadth of mole next to the river. Should this artificial navigation be extended along the *margin* of the river to the Tiber, I would, for the reasons which follow, say, that this canal must be regarded as a *continuous* basin all the way from Rock creek to the Tiber.

Where an artificial navigation is conducted alongside of a natural ship channel, there is sufficient reason to justify the construction of ample landing places between the two navigable waters; therefore, as far as the canal in question is so circumstanced, a width of mole or quay equal to the demand of the commerce to be transacted on the same, should be provided, and a correspondent expansion of canal made, to allow the free operation of the boats.

Under this view of the subject, I should not hesitate to say that the basin ought to have at least 80 feet in width extended to the end of the line of navigation, upon the ground of its bordering on or near the channel of the river.

ROB'T MILLS,
Engineer & Architect.

October 19*th*, 1831.

T. F. Purcell. The object in extending the basin to connect with Mr. Goldsborough's wharf, was in order that the pier or mole might be render more capacious, and, of course, more useful, they mutually depending, as they do, on each other; the mole to receive, and the basin to land, the produce. As to its appearing of a contracted width on the map at the wharf, is an error in drawing it, never being the design to construct the basin as is there shown.

THOS. F. PURCELL.

T. F. Purcell. The basin, as at present made, extends to the line Q B, while the condemnation is continued to D B. The space between D and Q is essential to the security of the basin, because, if the canal company had not the control of this piece of ground, the adjoining landholder might, by cutting a trench, or by lowering his wharf, empty the basin, and prevent any water from remaining therein.

THOS. F. PURCELL.

The following agreement was filed:

Agreement of counsel.

CHESAPEAKE & OHIO CANAL COMPANY
vs.
JOHN MASON.

SAME
vs.
UNION BANK.

SAME
vs.
HOWES GOLDSBOROUGH.

In these cases, it is agreed that the plats and all deeds and documents respecting the titles of defendants, used by the parties in the circuit court, or copies of them, shall be used on these appeals without being copied or referred to in the record; also, that all the printed documents, reports, and proceedings of the board and of the company, and the memorials presented to the Congress of the United States and the Legislatures of Maryland and Virginia, and the documents accompanying them, shall be also used as if contained in the record.

That the causes shall be heard together, and as if cross appeals had been made in each case by the defendants, so as to get a decision on the points decided by the circuit court, both for and against the defendants. A release executed by the company in favor of John Mason is also to be used, as if in the record: also, a deed from Taney to Mason and Stoddart.

The objection of want of notice in the case against Mason is also to be considered by the Supreme Court. And depositions may be taken on one day's notice before a justice of the peace, to support the objection, which are to be considered as if in the record. It is also agreed, in the case against J. Mason, that the plot made out in that case by Carberry & Purcell, or Bussard & Rodier, or, if that is lost, any other that they may make, showing the lot, the canal, and bank and road, or street and bridge, and the land condemned, and the channel opposite to the lot, may be used as in the record.

THOS. SWANN, *the Canal Company.*
F. S. KEY, *for defendants.*

The following papers were filed by the Chesapeake and Ohio Canal Company.

The memorial of Joseph Gales, jun'r, mayor of the city of Washington, to the President of the United States, respectfully showing, prays:

The memorial of the mayor of Washington to the President of the U. S. for a grant of a portion of the President's square.

That, by virtue of authority in the said mayor vested by the resolution, of which an authenticated copy is hereto annexed, the President of the United States will consent to the occupation by the corporation of the city of Washington, for the purpose of a basin at the eastern termination of the Chesapeake and Ohio canal, of so much of the public space fronting the President's house as is included within the plan of said basin hereto annexed, prepared and signed by said the board of engineers of the Chesapeake and Ohio Canal Company, and the metes and bounds whereof are described in the letter of the said board to a committee of the corporation, also hereto annexed.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the corporation of the said city of Washington, this eighteenth day of February, A. D. eighteen hundred and twenty-nine.

JOS. GALES, junior, [SEAL.]
Mayor.

Grant of the President of the U. S.

I consent to the occupation and improvement of the corporation of the city of Washington, of the open space above described, for the purpose above mentioned. *2 March*, 1829.

JOHN QUINCY ADAMS.

Resolution requesting the mayor to ask for a portion of the President's square for a basin.

Resolution requesting the Mayor to ask for a grant of so much of the President's square as may be required for a basin at the eastern termination of the Chesapeake and Ohio canal.

Resolved by the board of aldermen and board of common council of the city of Washington, That the mayor be, and he is hereby, requested to ask of the competent authorities to grant, for the use of this corporation, such a portion of the President's square as may be required for the formation of a basin at the eastern termination of the Chesapeake and Ohio canal.

ALEXANDER McINTIRE,
President of Board of Common Council.
W. W. SEATON,
President of Board of Aldermen.

Approved, *Feb'y 9th*, 1829.

JO. GALES, jr., *Mayor.*

REGISTER'S OFFICE,
February 11th, 1829.

I certify that the aforegoing is a true copy of the original resolution filed in this office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the corporation of the said city of Washington.

WM. HEWITT, *Register.* [L. S.]

Report of Benj. Wright & Nathan S. Roberts, member of the board of engineers C. & O. canal, to the joint committee of city council.

GEORGETOWN, 16*th February*, 1829.

To the chairman of the joint committee of the aldermen and common council of the city of Washington:

SIR: Agreeably to your directions, a survey has been made for the purpose of locating a basin at the mouth of the Tiber, in front of the President's square, proposing to occupy a part of the same.

The dimensions of said basin are recommended as follows, viz. beginning on the west line of 17th street where the north line of Canal street intersects the same; thence east, along the north line of Canal street (1766 feet) across 17th street, the President's square, and to the east side of 15th street; thence south, along the said east side of 15th street, 900 feet; thence west, and parallel to the said north line of Canal street, across the President's square, and to the west side of 17th street; thence, along the west line of 17th street, to the place of beginning, 900 feet, north; containing of water and dry ground 36 acres and $\frac{12}{100}$ of an acre, including the width of the streets above mentioned, which are proposed to be occupied as the bases of the embankments which enclose the basin. The particular boundaries to be placed by the city sur-

veyor, of the above superficies, 4 acres $\frac{12}{100}$ at the southeast corner of the parallelogram is ground which is proposed to be excavated as low as the bottom of the basin, and is calculated to be necessary to furnish earth for the embankment on the east, the *west*, and *south* side of the proposed basin. The north embankment, along the direction of Canal street, to be raised from earth taken from the north side, and the necessary filling up on the same side. The canal, from Rock creek or Georgetown, is to enter the above basin near B street; and the lock connecting the basin with the Potomac may be located near the southwest corner, according to circumstances.

Respectfully submitted.

BENJ'N WRIGHT,
NATHAN S. ROBERTS,
Member of the board of engineers C. and O. canal.

Proceedings of the President & Directors of the Ches. & Ohio Canal Company.

The opinion required of the Attorney General of the U. S. by the proceedings of the stockholders of the 17th September, 1828, was given on the 9th October following, and is printed with the proceedings of the stockholders.

The President and Directors of the Ches. and Ohio Canal Company, in meeting, November 26th, 1830.

A communication was received from the board of common council of the city of Washington, requesting to know "whether this board will consider it a suitable basin for the reception of the waters of the Chesapeake and Ohio canal, if the corporation of Washington purchase the Washington canal, and complete the same one hundred and fifty feet wide, from Seventeenth to Sixth streets west;" and, upon consideration of which, it was

Resolved, That this board will consider the said canal a suitable basin, when completed according to the plan prescribed in the said resolution, and will conduct the Chesapeake and Ohio canal thereto: *Provided, however*, That any locks which may be necessary to descend from the Chesapeake and Ohio canal into the said proposed basin, shall be constructed at the cost of the corporation of Washington.

The stockholders of the Chesapeake and Ohio Canal Company, in general meeting, July 25th, 1831.

Resolved, That the President and Directors of the Chesapeake and Ohio Canal Company be, and they are hereby, authorized to commence, without delay, that portion of the canal between Rock creek and the basin at the mouth of Tiber creek, and to prosecute the same simultaneously with the excavation of the said basin by the corporation of Washington: *Provided*, The said President and Directors shall be satisfied, upon a full consideration of all circumstances in relation thereto, that it is expedient to commence and prosecute the same forthwith.

Resolved, That the modification, by the President and Directors, of the terms required by the resolution of the stockholders on the 17th day of September, 1828, and which resolution sti-